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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-189639

DATE: March 24, 1978

MATTER OF: Anthony J. Vrana - Real Estate
Expenses - Loan Origination Fee

- DIGEST:
1. Employee may not be reimbursed for loan origination fee paid incident to financing purchase of a residence upon his relocation, since the fee was stated as lump sum and included charges to cover the lender's overhead and underwriting expenses and is finance charge within the meaning of Regulation Z, 12 C.F.R. § 226.4(a).
 2. Charges contained in loan origination fee incurred by reason of purchase or sale of a residence incident to a permanent change of station may be reimbursed only if charge is (1) expressly excluded from finance charge by Regulation Z, 12 C.F.R. § 226.4(e), (2) reasonable in amount, and (3) itemized to show the portion of the origination fee allocable to each item. Matter of Cecil W. Foss, B-185999, October 8, 1976; is overruled.
 3. The requirement that reimbursable charges included in loan origination fee be itemized to show the portion of the total fee allocable to each item is prospective only and is not to be applied where the settlement of the transaction predates this decision.

This action is in response to a request from Ms. Orris C. Huet, an authorized certifying officer of the National Finance Center, United States Department of Agriculture, reference FI-2 OCH, questioning the propriety of certifying a voucher

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in favor of Mr. Anthony J. Vrana, for expenses incurred when he purchased a residence incident to a transfer.

The record indicates that in accordance with Travel Authorization No. 3157 dated September 10, 1976, Mr. Vrana was transferred from Washington, D.C., to New Orleans, Louisiana, where he purchased a residence. Included as Item #801, on the United States Department of Housing and Urban Development Settlement Statement used by Mr. Vrana's lender to document settlement costs, was a charge against Mr. Vrana in the amount of \$635, labeled "Loan Origination Fee, 1%."

On his application for reimbursement of real estate expenses, Mr. Vrana claimed the \$635 loan origination fee as a "FHA or VA Application Fee." However, loan origination fees are not peculiar to FHA or VA loan applications. They may also be levied in connection with conventional type loans. Therefore, pending our decision, the \$635 was excluded from the reimbursement payment on the ground that it was a "finance charge" and as such, was not reimbursable under the provisions of Federal Travel Regulations, FPMR 101-7, para. 2-6.2d (May 1973) (FTR) which provides in pertinent part, that:

"* * * no fee, cost, charge, or expense is reimbursable which is determined to be a part of the finance charge under the Truth in Lending Act, Title 1, Public Law 90-321, and Regulation Z issued pursuant thereto by the Board of Governors of the Federal Reserve System. * * *"

The pertinent parts of Regulation Z, 12 C.F.R. § 226.4 (1977), state as follows:

"§ 226.4 Determination of finance charge.

"(a) General rule. Except as otherwise provided in this section, the amount of the finance charge in connection with any transaction shall be determined as the

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sum of all charges, payable directly or indirectly by the customer, and imposed directly or indirectly by the creditor as an incident to or as a condition of the extension of credit, whether paid or payable by the customer, the seller, or any other person on behalf of the customer to the creditor or to a third party, including any of the following types of charges:

* * * * *

"(2) Service, transaction, activity, or carrying charge.

"(3) Loan fee, points, finder's fee, or similar charge.

* * * * *

"(e) Excludable charges, real property transactions. The following charges in connection with any real property transaction, provided they are bona fide, reasonable in amount, and not for the purpose of circumvention or evasion of this part, shall not be included in the finance charge to that transaction:

"(1) Fees or premiums for title examination, abstract of title, title insurance, or similar purposes and for required related property surveys.

"(2) Fees for preparation of deeds, settlement statements, or other documents.

"(3) Amounts required to be placed or paid into an escrow or trustee account for future payments of taxes, insurance, and water, sewer, and land rents.

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"(4) Fees for notarizing deeds and other documents.

"(5) Appraisal fees.

"(6) Credit reports."

On January 20, 1977, Mr. Vrana submitted a reclaim voucher for reimbursement of the "origination fee." Accompanying his voucher was a letter dated January 13, 1977, from Troy and Nichols, Inc. (the lender), which set out the purpose of the loan origination fee. The letter stated that:

" * * * the loan origination fee covers the following items:

"1) Typing.

"2) Preparing documents to send to the attorney to close the loan.

"3) Obtaining & verifying credit, income, and deposits.

"This fee does not include any charges for advisory services, discounts, points, financial charges, insurances, and taxes. This fee represents the normal fee charged in this area."

In response to the Finance Center's request for further clarification of the origination fee, Troy and Nichols wrote in a second letter dated August 22, 1977, that:

"The origination fee is not a fee for 'originating' the loan. It is basically a fee covering the costs of running the office in Slidell, Louisiana. Using this as a guideline, the origination fee basically covers all clerical work, underwriting procedures, as well as, income determination and reviewing of the appraisal. * * *"

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We have found underwriter's fees to be charges incident to the extension of credit, within the meaning of Regulation Z and thus not reimbursable. See Matter of Claude C. Persinger, B-183972, April 16, 1976. Further, in Matter of William D. Curtis, B-196312, April 11, 1977, we concluded that a loan origination fee attributable to overhead costs also falls within the definition of a finance charge in Regulation Z and is, therefore, nonreimbursable. We think that in the present case, that part of the origination fee used to cover the costs of running the lender's office is properly attributable to overhead and, like the portion attributable to underwriting procedures, may not be reimbursed. Because the origination fee is stated as a lump sum, we are unable to determine the portion of the fee allocable to any reimbursable items. Therefore, Mr. Vrana's claim may not be certified for payment.

The certifying officer also states that based on our decision in Matter of Cecil W. Foss, B-185999, October 8, 1976, a travel voucher was certified for payment covering a 1 percent loan origination fee to George E. Waldhous, who had also purchased a residence incident to the transfer of his official duty station. While only reimbursable items were listed on his voucher, there was, as on Mr. Vrana's voucher, no specific itemization showing which portion of the fee was allocable to each item. The claim, however, was supported by a statement from the lender saying that certain specific items (which we had previously determined to be nonreimbursable) were not included in the fee. We are now asked whether action should be taken to recover the payment if the voucher was erroneously certified.

Regulation Z expressly categorizes loan fees as finance charges incident to or as a condition of the extension of credit. Our position that loan origination fees are finance charges under Regulation Z and, therefore, not reimbursable, is long-standing and is required by FTR para. 2-6.2d. This requirement is based on the rationale that a fee which is stated as a fixed percentage of the amount loaned without reference to the type or extent of services

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actually performed by the lender is more in the nature of a charge for the hire of money than it is a charge for costs and services incurred in the course of processing the loan. See Forsinger, supra. Accordingly, where it is claimed that the loan origination fee is levied to reimburse the lender for costs or services that are expressly excluded from the Regulation Z definition of a finance charge, we require an itemization of the allegedly reimbursable items to ensure that reimbursement is authorized only for charges which are not part of the finance charge and which are otherwise reimbursable under FTR para. 2-6.2d. Matter of James J. Beirs, B-184703, April 30, 1976.

Nevertheless, in Foss, supra, we concluded that if a determination could be made that the total fee was reasonable in the light of customary charges of the area, a claim supported by an itemization listing only reimbursable charges could be paid although the itemization did not show the portion of the fee allocable to each item. That decision was based in part on the lender's statement that the loan origination fee did not include charges for "advisory services, mortgages, discounts, points, financial charges, insurance, or taxes," none of which are reimbursable. We note, however, that although the January 13, 1977 letter from the lender in the case of Mr. Vrana considered above, contains the identical statement, further inquiries produced information showing that nonreimbursable charges, other than those expressly disclaimed by the lender, were contained in the total fee. Indeed, had there been no additional clarification, we think the lender's first letter would have provided sufficient basis for reimbursement under the Foss criteria. The Troy and Nichols letter of August 22, 1977, in response to the certifying officer's subsequent inquiry, however, makes it apparent that adherence to the principles enumerated in Foss will not ensure that reimbursement is limited to only authorized charges.

We have, therefore, reconsidered the position taken in Foss and have determined that it will no longer be followed. Regulation Z, subparagraph (e), enumerates certain fees incident to real property transactions which are excludable from the finance transaction. As noted above, FTR para. 2-6.2d prohibits reimbursement of any charge

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determined to be a finance charge under Regulation Z. Inasmuch as loan origination fees are finance charges, claims for reimbursement of such fees may be paid only to the extent the fee includes charges for the items expressly excluded by subparagraph (e) of Regulation Z. In addition, those fees enumerated as excludable are, by the express terms of Regulation Z, excludable only if reasonable in amount. It is our view, then, that in order to determine the reasonableness of each charge, in comparison to the amount usually charged in the area, reimbursable fees must be itemized to show the portion of the total loan origination fee allocable to each charge for which reimbursement is claimed.

Although Mr. Waldhous did not itemize the reimbursable charges included in his loan origination fee, we think that the certifying officer justifiably relied on the Foss decision in making payment. In overruling precedents on which reliance has justifiably been placed, it has been our practice to apply the new rule only prospectively in order to avoid disrupting settled claims and the necessity of opening new claims which may not have been promptly investigated. See 56 Comp. Gen. 561 (.977), and cases cited therein. Therefore, the itemization requirement set forth above is to be applied prospectively only and applies only where the settlement of the transaction for which reimbursement is claimed occurs after this decision. Therefore, no action to recover the payment to George E. Waldhous is required.

In accordance with the foregoing, the reclaim voucher of Anthony J. Vrana may not be certified for payment.

R. J. Kistler
Deputy Comptroller General
of the United States